

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #4	CCRB Case #: 201808904	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/25/2018 10:54 PM	Location of Incident: East 45th Street and Linden Boulevard	Precinct: 67	18 Mo. SOL 4/25/2020	EO SOL 12/10/2020	
Date/Time CV Reported Fri, 10/26/2018 10:26 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 10/26/2018 10:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Bautista	113	954534	067 PCT
2. POM Flagumy Valcourt	06178	954389	067 PCT
3. POM Jose Delgado	699	955523	067 PCT
4. An Officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT David Grieco	03830	940216	067 PCT
2. POM Edwin Duran	19219	952700	067 PCT
3. LT Joseph Grimm	00000	946688	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Flagumy Valcourt	Abuse: Police Officer Flagumy Valcourt stopped § 87(2)(b)	
B.POM Jose Delgado	Abuse: Police Officer Jose Delgado stopped § 87(2)(b)	
C.POM Joseph Bautista	Abuse: Police Officer Joseph Bautista stopped § 87(2)(b)	
D. An Officer	Abuse: An Officer threatened § 87(2)(b) with the use of force.	
E.POM Joseph Bautista	Abuse: Police Officer Joseph Bautista frisked § 87(2)(b)	
F.POM Joseph Bautista	Abuse: Police Officer Joseph Bautista searched § 87(2)(b)	

Case Summary

On October 26, 2018, § 87(2)(b) filed this complaint on behalf of § 87(2)(b) with the CCRB via email.

On October 25, 2018, at approximately 10:54 p.m., PO Flagumy Valcourt, PO Jose Delgado, and PO Joseph Bautista, of the 67th Precinct, stopped § 87(2)(b) in the vicinity of East 45th Street and Linden Boulevard in Brooklyn (**Allegation A through C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) ran and the officers ran after him. An unidentified officer allegedly stated to § 87(2)(b) “Stop running or I’ll shoot” and “Hit the ground or I will shoot” (**Allegation D: Abuse of Authority**, § 87(2)(g) § 87(2)(b)). PO Bautista frisked and searched § 87(2)(b) (**Allegation E and F: Abuse of Authority**, § 87(2)(g) § 87(2)(b)). § 87(2)(b) was taken to the 67th Precinct stationhouse and was released with a summons for disorderly conduct (BR 13).

On November 13, 2018, BWC videos were obtained, which capture the incident after the alleged misconduct. The videos do not capture any FADOs. The full videos are located in and can be viewed from Investigative Actions # 34-35.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Flagumy Valcourt stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Jose Delgado stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Joseph Bautista stopped § 87(2)(b)

Allegation (D) Abuse of Authority: An Officer threatened § 87(2)(b) **with the use of force.**

It is undisputed that officers stopped § 87(2)(b). The circumstances surrounding the stop remain in dispute. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) said (BR 02) that he was walking on the sidewalk. § 87(2)(b) denied having a gun or disposing of a gun. § 87(2)(b) noticed a black unmarked sedan driving slowly on his right. § 87(2)(b) sped up to see if the car would stop following him. The car matched his speed and continued to follow him. The driver of the car, PO Valcourt, said, “Yo, stop.” PO Valcourt did not identify himself as a police officer and the unmarked car did not turn on its emergency lights or siren. § 87(2)(b) noticed there were three other males in the car and believed he was going to be robbed. § 87(2)(b) subsequently ran. § 87(2)(b) ran through traffic, causing cars to honk and slow down. § 87(2)(b) heard foot steps behind him, but he did not turn around or see who was chasing him. A male voice stated, “Stop running or I will shoot.” § 87(2)(b) continued to run. § 87(2)(b) saw another unmarked car, realized was being chased by police officers, and then stopped. A male voice yelled, “Hit the ground or I will shoot.” § 87(2)(b) got down to the ground. PO Bautista approached § 87(2)(b) handcuffed him, and lifted him off the ground. Sgt. Grieco approached § 87(2)(b) and asked, “Where is the gun?” § 87(2)(b) said he did not have a gun. § 87(2)(b) was then placed in an unmarked car. Approximately 20 minutes later, the officers transported § 87(2)(b) to the 67th Precinct stationhouse. Approximately two hours later, § 87(2)(b) was released with a summons for disorderly conduct.

PO Valcourt (BR 03) stated that he, PO Delgado, PO Bautista, Sgt. Grieco, and PO Duran were assigned as Field Intelligence Officers within the confines of the 67th Precinct. PO Valcourt, PO Delgado, PO Bautista were in a dark-green Ford Taurus. PO Valcourt was the driver, PO Delgado was seated in the front passenger seat, and PO Bautista was seated in the rear.

PO Valcourt drove on East 45th Street at approximately seven to twelve miles per hour. Sgt. Grieco and PO Duran were in a black Dodge Charger and traveled approximately half a car length behind PO Valcourt's car. PO Valcourt observed § 87(2)(b) walking alone on the sidewalk approximately one car length ahead of PO Valcourt's car. It was dark outside, but the sidewalk was well lit. § 87(2)(b) turned his head back and looked at PO Valcourt's car as if he was trying to see who was inside. § 87(2)(b) repeated this motion several times for approximately two to three minutes. Nothing else drew PO Valcourt's attention to § 87(2)(b) besides this motion. PO Valcourt did not communicate his observations to his partners. PO Valcourt thought that § 87(2)(b) was scared and decided to pull up next to § 87(2)(b) and inform him that they were the police. PO Valcourt did not intend on stopping § 87(2)(b). PO Valcourt did not see any bulges on § 87(2)(b). PO Valcourt did not believe that § 87(2)(b) was armed.

PO Valcourt pulled up next to § 87(2)(b) and, "Hello. It is the police." PO Valcourt denied asking § 87(2)(b) to stop. PO Delgado and PO Bautista did not make any statements to § 87(2)(b). § 87(2)(b) looked at PO Valcourt and clutched his stomach, by wrapping both of his arms around his waist and bending forward, as if he was trying to safeguard something. When asked to explain what he suspected that "something" was, PO Valcourt said, "In my line of work, it could have been something that could have endangered me or the other people who were there at that time... Maybe a firearm. I am not sure. I did not see a firearm. I just saw him clutch his arms." PO Valcourt based his suspicion on his prior experience working in the Anti-Crime Unit and FIO, and the ability to read human body language. There were no other reasons why PO Valcourt suspected § 87(2)(b) may be armed. PO Valcourt did not see § 87(2)(b) reach for anything inside of his waistband.

Simultaneously as § 87(2)(b) clutched his stomach, § 87(2)(b) jumped in the corner in between parked cars, disappearing from PO Valcourt's view, ran towards Linden Boulevard, and turned onto Troy Street. PO Valcourt did not see § 87(2)(b) throw anything as he ran, nor was he informed about it by any of his partners. PO Bautista, PO Delgado, and PO Duran chased after § 87(2)(b) on foot. PO Valcourt did not hear his partners issue any commands to § 87(2)(b). PO Valcourt drove and lost sight of the officers and § 87(2)(b). PO Valcourt later saw § 87(2)(b) laying on the ground and officers, he did not recall which ones, standing next to him. PO Valcourt noted in his memo book that § 87(2)(b) ran across the street and almost caused an accident. PO Valcourt clarified that he did not witness this and was informed about it later by PO Delgado or PO Bautista. PO Valcourt parked his vehicle and, along with other officers, canvassed the area to see if § 87(2)(b) had disposed of anything. No contraband or weapons were recovered.

Approximately 10 or 15 minutes later, Sgt. Grieco and PO Duran transported § 87(2)(b) to the 67th Precinct stationhouse. An officer, PO Valcourt did not recall which one, informed PO Valcourt that § 87(2)(b) was removed to the stationhouse to be identified, because he did not have identification. § 87(2)(b) was issued a summons and released. PO Valcourt did not remember which officer issued the summons nor what the summons was for. PO Valcourt did not and did not hear any officer say to § 87(2)(b) "Stop running or I will shoot" or "Hit the ground or I will shoot." PO Valcourt saw Sgt. Grieco speak to § 87(2)(b) but did not hear their conversation. PO Valcourt did not hear Sgt. Grieco question § 87(2)(b) about a gun.

§ 87(2)(g). PO Valcourt initiated a conversation with § 87(2)(b) but PO Bautista did not know why. PO Bautista did not remember if he observed any bulges on § 87(2)(b).

§ 87(2)(b) PO Bautista did not notice § 87(2)(b) until he heard PO Valcourt speaking to him. PO Bautista did not recall their conversation, but PO Valcourt identified himself as a police officer and said something along the lines of, “What’s up?” § 87(2)(b) did not respond. § 87(2)(b) looked at PO Valcourt, then stared in the direction of a nearby driveway for several seconds, and then turned his left or right shoulder forward as if he had thrown something away. § 87(2)(b) then turned around and ran. PO Bautista did not see what § 87(2)(b) threw, but suspected it could have been a gun because of § 87(2)(b)’s shoulder motion, the fact that he fled, and his prior experience, including numerous gun related arrests and stops. There were no other factors that led PO Bautista to believe § 87(2)(b) had thrown a gun.

PO Bautista did not remember if any officer issued commands to § 87(2)(b) when § 87(2)(b) ran. § 87(2)(b) ran across Linden Boulevard, through the traffic, causing cars to stop abruptly to avoid collision with § 87(2)(b). PO Bautista ran after § 87(2)(b) as § 87(2)(b) was in violation of disorderly conduct for obstructing vehicular traffic. PO Duran also chased after § 87(2)(b). PO Bautista did not recall if he issued any commands to § 87(2)(b) while chasing after him. PO Bautista did not and did not hear any officer say to § 87(2)(b) “Stop running or I will shoot,” or “Hit the ground or I will shoot.” Approximately a minute later, § 87(2)(b) stopped, got onto the sidewalk voluntarily, and onto the ground. PO Bautista approached § 87(2)(b), handcuffed him, and lifted him off the ground. PO Bautista frisked and searched § 87(2)(b) because he was under arrest. At the stationhouse, PO Bautista confirmed § 87(2)(b)’s identity and issued him a summons for disorderly conduct, for obstructing vehicular traffic.

PO Delgado’s statement (BR 04) was generally consistent with PO Valcourt’s, with the following exceptions. The officers observed § 87(2)(b) walking fast and looking around. PO Delgado did not suspect § 87(2)(b) was in violation of anything. PO Delgado did not recall if the officers discussed speaking to § 87(2)(b). PO Valcourt pulled up next to § 87(2)(b) and identified himself as a police officer by saying something to the effect, “Police, stop please.” § 87(2)(b) was not being detained or stopped. § 87(2)(b) made a U-turn and ran. § 87(2)(b) did not reach for anything, make any gestures, respond, or do anything else prior to running. PO Delgado did not observe any bulges on § 87(2)(b). PO Delgado exited the vehicle to see if § 87(2)(b) had dropped anything. PO Delgado did not see § 87(2)(b) discard a weapon or contraband, but was concerned that § 87(2)(b) might have dropped something because he ran. Neither PO Valcourt nor PO Bautista informed PO Delgado whether they saw § 87(2)(b) drop anything. PO Valcourt chased after § 87(2)(b) in the unmarked car. PO Delgado did not run after § 87(2)(b). PO Delgado did not know if any other officer chased after § 87(2)(b) but it was possible someone did because § 87(2)(b) ran through a busy intersection. § 87(2)(b) was eventually stopped, but PO Delgado did not know who stopped him.

PO Duran stated (BR 06) he was driving behind PO Valcourt’s unmarked car. He observed § 87(2)(b) engaged in conversation with the officers inside PO Valcourt’s unmarked car. PO Duran did not hear their conversation. PO Duran had not observed § 87(2)(b) prior to this. PO Duran could not describe § 87(2)(b)’s demeanor or his body language. PO Duran did not observe any bulges on § 87(2)(b) but noted that his view was obstructed with the vehicles parked along the sidewalk. PO Duran did not suspect § 87(2)(b) was armed when he first observed him. There was no radio communication between the lead car and PO Duran or Sgt. Grieco. Approximately a minute later, § 87(2)(b) bent forward and grabbed his waistband with both hands. PO Duran could see § 87(2)(b)’s hands, but not his waistband. § 87(2)(b) then ran against the flow of traffic. Simultaneously, PO Duran received a radio call, via short range radio, from one of the officers from the lead car saying, “He is running. He is running. I think he

dropped something,” without describing what it was. PO Duran did not see § 87(2)(b) drop anything prior to fleeing. However, the ducking motion and grabbing of his waist band made PO Duran believe that § 87(2)(b) had a gun. PO Duran explained that, in 2018, the 76th Precinct led the city in shooting incidents and the incident location is not far away from a gang-prone location. Based on this information, § 87(2)(b)'s motions, and his partners from the lead car informing him that they thought § 87(2)(b) dropped something, PO Duran believed that § 87(2)(b) had a gun. There was no other reason for which PO Duran suspected that § 87(2)(b) had a gun. PO Duran exited the vehicle and ran after § 87(2)(b). PO Duran did not issue any commands to § 87(2)(b). The officers from the lead car, PO Duran did not recall whether it was PO Bautista or PO Valcourt, also chased after § 87(2)(b).

Sgt. Grieco said (BR 10) that Lt. Grimm was also in the unmarked car with him and PO Duran. Sgt. Grieco noticed § 87(2)(b) while driving, but did not have a clear view of him because other cars blocked his view. Sgt. Grieco believed PO Valcourt, said “Hey, police” or a similar statement to that effect to § 87(2)(b) then ran. Sgt. Grieco did not observe any bulges and did not witness § 87(2)(b) throw anything while running. Sgt. Grieco did not know why the officers approached § 87(2)(b). An officer, Sgt. Grieco did not know which one, stated over the radio that they believed § 87(2)(b) threw something. Sgt. Grieco interpreted that “something” as possibly a weapon because of what the officer relayed over the radio and his experience in trusting other officers. PO Duran and Lt. Grimm exited the vehicle and chased § 87(2)(b). Sgt. Grieco followed § 87(2)(b) in his unmarked car. § 87(2)(b) ran for approximately two minutes through traffic. In the vicinity of Troy Avenue and Church Avenue, Sgt. Grieco yelled to § 87(2)(b) “Please stop running.” § 87(2)(b) stopped. Sgt. Grieco did not and did not hear any officer say to § 87(2)(b) “Stop running or I will shoot,” or “Hit the ground or I’ll shoot.” § 87(2)(b) was frisked and searched after he was stopped, but Sgt. Grieco did not know who did so. § 87(2)(b) was then placed in the back of Sgt. Grieco’s unmarked car. Sgt. Grieco spoke with § 87(2)(b) while the rest of the officers canvassed the location. Sgt. Grieco denied asking § 87(2)(b) about a gun.

Lt. Grimm said (BR 11) that someone from the first unmarked car stated over the radio that § 87(2)(b) threw something and started running. There were no additional details and the radio run did not specify what was thrown. Lt. Grimm did not notice § 87(2)(b) until he ran in the opposite direction. The officers from the first unmarked car exited the car and chased after § 87(2)(b). PO Duran and Lt. Grimm also exited their vehicle and attempted to chase after § 87(2)(b). However, § 87(2)(b) was a fast runner and they could not catch up to § 87(2)(b). § 87(2)(b) ran southbound on East 45th street, then ran across Linden Boulevard, and ran southbound on Troy Avenue where he was apprehended. Lt. Grimm did not know the circumstances regarding the other officers’ initial contact with § 87(2)(b).

PO Bautista prepared a Stop Report regarding this incident (BR 09). The narrative notes that on October 25, 2018, at approximately 10:54 p.m., PO Bautista observed § 87(2)(b) on a public street with the intent to cause a disruption, intentionally obstructing vehicular traffic by running in the middle of the street.

People v. De Bour 40 N.Y. 2d 210 (1976) (BR 07), officers must have a reasonable suspicion that an individual has participated in criminal activity before stopping them. Officer may request information from citizens (a “level one” interaction) when there is some when there is some objective credit reason for that interference not necessarily indicative credibility.

People v. Bora 83 NY 2d 531 (1994) (BR 08) states that an officer may stop a person when he reasonably suspects that such a person is committing, has committed, or is about to

commit a crime. An interaction constitutes a stop when a reasonable person would believe, under the circumstances that the officer's conduct is a significant limitation on his or her freedom of movement. The court also held that a defendant is not seized when a police officer asks him to stop. A seizure requires either physical force or, if there is no physical force, a submission to the assertion of authority.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Joseph Bautista frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Joseph Bautista searched § 87(2)(b)

It is undisputed that PO Bautista frisked and searched § 87(2)(b) § 87(2)(b) stated that PO Bautista handcuffed him and then frisked and searched § 87(2)(b) § 87(2)(b)'s jacket and pants pockets.

PO Bautista said that he frisked and searched § 87(2)(b) because § 87(2)(b) was considered under arrest for disorderly conduct, for obstructing vehicular traffic.

NYPD Patrol Guide Procedure 208-03 states that after an arrest has been effected and a prisoner has been handcuffed, officers should immediately field search/frisk the prisoner and the adjacent vicinity for weapons, evidence, and/or contraband (BR 09).

As noted above, § 87(2)(b) was transported to the 67th Precinct stationhouse and was released with a summons for disorderly conduct. § 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- PO Joseph Bautista has been a member of service for five years and has been subject in three CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- PO Jose Delgado has been a member of service for five years and has been subject in four CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Flagumy Valcourt has been a member of service for six years and has been a subject in three CCB complaints and three allegations.

- Complaint number 201610150 substantiated allegations of a failure to prepare a memo book entry against PO Valcourt. The Board recommended instructions and the NYPD imposed instructions.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- The New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 14).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 12).

Squad No.: ___4___

Investigator: _____ _____ _____

Signature Print Title & Name Date

Squad Leader: _____ _____ _____

Signature Print Title & Name Date

Reviewer: _____ _____ _____

Signature Print Title & Name Date